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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14 SAN DIEGO DIVISION

15 WHITEWATER DRAW NATURAL
16 RESOURCE CONSERVATION
17 DISTRICT, *et al.*,

18 Plaintiffs,

19 v.

20 ELAINE C. DUKE¹, *et al.*,

21 Federal Defendants.

Case No. 3:16-cv-2583

**FEDERAL DEFENDANTS'
NOTICE OF MOTION AND
MOTION TO DISMISS COMPLAINT
IN PART FOR LACK OF
JURISDICTION AND FAILURE TO
STATE A CLAIM**

Date: November 6, 2017
No Oral Argument Unless Requested by
the Court

Hon. H. James Lorenz

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26 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), Acting Secretary of the
27 Department of Homeland Security, Elaine C. Duke, is substituted for her
28 predecessor John F. Kelly.

1 PLEASE TAKE NOTICE THAT on November 6, 2017, before the Honorable H.
2 James Lorenz, in the United States Courthouse for the Southern District of California,
3 located at 221 West Broadway, San Diego, California, Elaine C. Duke, Acting Secretary
4 of Homeland Security, and the United States Department of Homeland Security will and
5 hereby do move the Court to dismiss, in part, Plaintiffs' Complaint.

6 Federal Defendants move to dismiss most of the claims in Plaintiffs' complaint as
7 they are not reviewable under the Administrative Procedure Act ("APA"), 5 U.S.C. §§
8 701–706, fall within explicit exemptions to APA reviewability, or are otherwise
9 committed to agency discretion by law. Several actions are also moot because the
10 underlying policies have been rescinded by the new Administration, they are time-barred,
11 or they fail to state a claim. Federal Defendants ask the Court to dismiss Counts I, II, and
12 III under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

13 This Motion is based upon this Notice and Motion, the accompanying
14 Memorandum of Points and Authorities, the Exhibits filed in support of this Motion, and
15 upon such other evidence as may be received by the Court.

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18 Respectfully submitted,

19 DATED: October 6, 2017

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28 *Attorneys for Federal Defendants*